

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT DYKES,

Plaintiff,

Case No. 18-cv-11528
Hon. Matthew F. Leitman

v.

BRYAN FULLER, *et al.*,

Defendants.

**ORDER SUSTAINING PLAINTIFF'S OBJECTION (ECF #23) TO
MAGISTRATE JUDGE'S ORDER STRIKING SUR-REPLY (ECF #21)**

Plaintiff Robert Dykes is an inmate in the custody of the Michigan Department of Corrections. Defendant Bryan Fuller is an employee of the Central Michigan Correctional Facility where Dykes was previously incarcerated. In this action, Dykes alleges, among other things, that Fuller violated his (Dykes') civil rights. (*See* Compl., ECF #1.)

On February 11, 2019, Fuller moved for summary judgment on the basis that Dykes failed to exhaust his administrative remedies. (*See* Mot., ECF #12.) Dykes responded to the motion on February 22, 2019 (*see* Resp. Br., ECF #16), and Fuller filed a reply brief on March 1, 2019. (*See* Reply Br., ECF #17.) On March 14, 2019, Dykes filed a two-page sur-reply in which he argued that Fuller had raised a "new argument in [Fuller's] reply [brief]." (Sur-reply, ECF #20 at Pg. ID 220.) The

Magistrate Judge struck the sur-reply on March 15, 2019, because sur-replies are not allowed under the Court's Local Rules. (*See* Order, ECF #21.)

Dykes has now filed a timely objection to the Magistrate Judge's order striking the sur-reply. (*See* Objection, ECF #23.) The Court acknowledges that sur-replies are generally not permitted in this Court. However, in this case, Dykes' sur-reply is short and focused on the discrete issue of whether Fuller improperly raised a new argument in his reply brief. The Court believes that it would be appropriate under these circumstances to allow Dykes to file his sur-reply.

Accordingly, for the reasons stated above, Dykes' objection to the Magistrate Judge's March 15, 2019, order striking Dykes' sur-reply is **SUSTAINED**. The Court further directs that that sur-reply be included in the Magistrate Judge's consideration of Fuller's pending motion for summary judgment.

IT IS SO ORDERED.

s/Matthew F. Leitman

MATTHEW F. LEITMAN

UNITED STATES DISTRICT JUDGE

Dated: May 6, 2019

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on May 6, 2019, by electronic means and/or ordinary mail.

s/Holly A. Monda

Case Manager

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